

April 2, 1998

D.P.U.\D.T.E. 96-30-A

Petition of over twenty customers of New England Telephone and Telegraph Company d/b/a NYNEX, pursuant to G.L. c. 159, § 24, regarding the quality of telephone service in the Mission Hill area.

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FOR: NEW ENGLAND TELEPHONE AND TELEGRAPH
COMPANY D/B/A
BELL ATLANTIC-MASSACHUSETTS
Respondent

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Intervenor

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Limited Participant

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ORDER ON COMPLIANCE FILING

I. INTRODUCTION

In NYNEX/Mission Hill, D.P.U. 96-30 (1997) ("D.P.U. 96-30"), the Department of Public Utilities, now known as the Department of Telecommunications and Energy ("Department"), investigated a service outage that occurred in the Mission Hill area of Boston in January 1996. In the course of this investigation, the Department found that many of the procedures New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic" or "Company") uses to respond to major extended service outages ("MESOs") are "ad hoc" and inadequate to meet the needs of customers. D.P.U. 96-30, at 27 (1997). In response, the Department ordered Bell Atlantic to develop a comprehensive plan for addressing MESOs and to file that plan for Department approval as part of a compliance filing that would address all directives contained in the D.P.U. 96-30 Order. Id.

On October 22, 1997, Bell Atlantic submitted its compliance filing ("Compliance Filing") for Department approval.¹ On December 1, 1997, the Attorney General of the Commonwealth ("Attorney General"), State Representative Kevin W. Fitzgerald and Boston City Councilor Thomas M. Keane (together, "Elected Officials"); and Alison Pultinas and Richard Giordano ("Customers") filed comments on the Compliance Filing. On December 15,

¹ On December 8, 1997, Bell Atlantic filed a Motion for Confidential Treatment of Attachments A and B of the Compliance Filing ("Motion"). On January 22, 1998, the Hearing Officer granted the Motion, in accordance with G.L. c. 25, § 5D, because Attachments A and B contain competitively sensitive information.

1997, Bell Atlantic filed reply comments. In addition, the record includes Bell Atlantic's responses to 16 Department information requests.²

II. COMPLIANCE FILING

A. MESO Definition

_____ In D.P.U. 96-30, at 27, the Department directed the Company to include in its Compliance Filing a definition of a MESO that included time and customer threshold elements. The Department also directed Bell Atlantic to discuss how it would respond to outages that did not meet its proposed definition of a MESO. Id.

1. Bell Atlantic

In its Compliance Filing, Bell Atlantic proposes to define a MESO as a service interruption affecting at least 200 customers which lasts more than 48 hours (Compliance Filing at 2; IR-DTE-1-1, at 2). According to Bell Atlantic, it will declare a MESO at the moment the Company anticipates that it will take more than 48 hours to restore service, but in no event later than 48 hours after a major service interruption (IR-DTE-3-1). Bell Atlantic states that its definition of a MESO reasonably balances the needs of consumers during extended outages with the Company's need to allocate appropriate resources to identifying the cause of an outage and the Company's goal of restoring service within 24 hours (IR-DTE-1-1, at 2; IR-DTE-3-1).

² Through this Order, the Department moves Bell Atlantic's responses to these information requests into the record.

Specifically, the Company states that it strives to restore and fix all service maintenance problems within 24 hours (IR-DTE-1-1, at 2). Bell Atlantic indicates that during 1996 and 1997, the Company experienced 99 outages in which 200 or more customers were affected (IR-DTE-3-2). Of these, one outage lasted more than 24 hours but less than 48 hours, and six outages lasted more than 48 hours (id.).

2. Comments

The Attorney General recommends a threshold of 24 hours for implementing MESO procedures because (1) customers may be able to reach emergency services earlier and (2) it is consistent with the Company's goal to restore and fix all service problems within 24 hours (Attorney General Comments at 5). The Elected Officials and Customers state that they agree with the position of the Attorney General (Fitzgerald Comments at 1; Keane Comments at 1-2; Giordano Comments at 1-2; Pultinas Comments at 1).

3. Analysis and Findings

The record indicates that Bell Atlantic will "immediately" invoke MESO procedures anytime it "anticipates" a service interruption affecting at least 200 customers will last more than 48 hours (see IR-DTE-3-1). Thus, the Company may declare a MESO even before an outage lasts 24 hours if it determines that it cannot restore service within 48 hours. The commentors' recommendation that Bell Atlantic always declare a MESO after a service interruption of 24 hours is not necessary and could divert essential resources from the Company's stated objective of restoring service within 24 hours. Accordingly, the Department finds that Bell Atlantic's definition of a MESO, as clarified in its responses to Department

information requests, is reasonable and appropriate. Notwithstanding this finding, we note that Bell Atlantic did not include in its Compliance Filing a discussion of how it would respond to outages that are less severe than a MESO in terms of customers affected and duration. We therefore find Bell Atlantic's filing to be deficient and require the Company to comply with our original directive within 14 days of this Order.

B. Notification

In D.P.U. 96-30, at 21, the Department found that Bell Atlantic did not adequately (1) inform Mission Hill customers of the availability of voice intercept and voice messaging services, nor (2) inform customers with critical medical needs how to obtain preferential restoration of service. In addition, the Department found that Bell Atlantic's notification procedures to emergency services and health providers were inadequate during the Mission Hill outage. Id. Accordingly, the Department directed Bell Atlantic to submit a description of its notification policies and procedures in its Compliance Filing. Id. at 22.

1. Bell Atlantic

In its Compliance Filing, the Company states that within 24 hours of a declared MESO, it will: (1) notify institutional health care providers such as hospitals, nursing homes, and emergency service providers (i.e., police, fire, and other emergency medical service agencies); (2) distribute flyers to residential and business customers containing emergency information (including the name, title, business address, and telephone number of Bell Atlantic's contact

person); (3) inform customers who call the customer service bureau of the availability of voice intercept, voice messaging, and call forwarding services;³ and (4) immediately notify the Department's Consumer Division of a problem (Compliance Filing at 3-4). In addition, Bell Atlantic states that in the white pages of its telephone directories and bill inserts mailed twice each year, customers will be informed about the availability of bill credits during a MESO; voice intercept, voice messaging, and call forwarding services; and the opportunity for those with medical needs to obtain priority restoration of telephone service during an outage (id. at 3).

2. Comments

The Attorney General states that Bell Atlantic should notify its customers that priority restoration of service exists for customers with serious medical conditions (Attorney General Comments at 7; see also Fitzgerald Comments at 2). The Attorney General also recommends that Bell Atlantic establish a toll free telephone number for customers with serious medical conditions to call for additional information regarding restoration of service (Attorney General Comments at 7-8).

3. Analysis and Findings

The Department finds that Bell Atlantic's notification procedures are reasonable and appropriate, and in compliance with the Department's directives in D.P.U. 96-30. With regard to the Attorney General's comments, we find that a toll-free number would be redundant

³ A voice intercept message indicates to a caller that the line is out of order (Compliance Filing at 4). Voice messaging allows callers to leave messages retrievable by the customer affected by the outage and call forwarding directs a call to another location (id.).

because the information regarding priority restoration of service will be disseminated in written materials as described above, and customers who call Bell Atlantic's customer service bureau during an outage will be told about the availability of voice intercept, voice messaging, and call forwarding services.

C. Substitute and Temporary Services

1. Voice Intercept, Voice Messaging, and Call Forwarding Services

_____ In D.P.U. 96-30, at 23, the Department found that the substitute services of voice intercept and voice messaging were an important component of Bell Atlantic's extended outage services and directed Bell Atlantic to establish procedures to ensure that these services will be available, where technically feasible, to all customers who want such services. The Department specifically directed Bell Atlantic to include in its Compliance Filing a policy for placing the voice intercept message on all lines that are out-of-service at the beginning of a MESO. Id.

_____ a. Bell Atlantic

Bell Atlantic states that when a customer calls its customer service bureau, the Company will offer substitute services in the following order: (1) voice intercept; (2) call forwarding; and (3) voice messaging (Compliance Filing at 4). Bell Atlantic states that offering these services in this manner meets customer needs and minimizes the impact on the efficiency of the customer service bureau's overall operations (id.). The Company states that: (1) voice intercept services require approximately 2 minutes to explain and obtain the customer's acceptance; (2) call forwarding services require approximately 2 minutes to explain;

and (3) voice messaging services may require up to 25 minutes to discuss and implement (id.). Bell Atlantic estimates that widespread offering of voice messaging during a MESO can adversely affect the performance of the customer service bureau's ability to respond to an outage and may also adversely affect current voice messaging customers (id.). The Company states that voice intercept, call forwarding and voice messaging are central office based and a MESO caused by a switch failure will render the availability of these three options technically infeasible (id.).

b. Comments

The Attorney General states that Bell Atlantic's proposal to make every effort to obtain customer acceptance of Voice intercept or call forwarding services does not allow a customer to freely obtain voice messaging services (Attorney General Comments at 8). The Attorney General argues that Bell Atlantic should describe the voice intercept, call forwarding and voice messaging services completely and allow customers to choose which service they prefer (id.).

c. Analysis and Findings

The Company's notification procedures, discussed above in section II.B., provide customers with adequate information about the range of available substitute service options. Further, offering substitute services in the order described by the Company will neither delay restoration of service nor interfere with existing voice messaging services. Accordingly, the Department finds that Bell Atlantic's policy for offering voice intercept, call forwarding and voice messaging services during a MESO is appropriate and reasonable, and in compliance with our directives. The Department notes, however, that because Bell Atlantic's procedures

may tend to have the affect of discouraging customers from using voice messaging services, it is important that the Company's fliers and other informational documents clearly and impartially describe the availability of all three services during a MESO. Therefore, the Department directs the Company to submit its information materials discussing these services to the Department's Consumer Division for review and approval, within 30 days of this Order.

2. Substitute Cellular Services

In D.P.U. 96-30, at 23, the Department found that there was a need for Bell Atlantic to develop a policy governing the provision of cellular phones during extended service outages to emergency services providers and hospitals and nursing homes as well as to residential customers with medical needs. The Department also directed Bell Atlantic to submit a feasibility study on the provision of substitute telephone service to all customers during extended service outages. Id. at 24.

a. Bell Atlantic

_____ Bell Atlantic states that it will deliver cellular phones to emergency services providers⁴ within six hours of a declared MESO and to residential customers with medical needs within 24 hours of a declared MESO (Compliance Filing at 6). Bell Atlantic states that it has not completed its feasibility study for the provision of substitute cellular service to all customers during a MESO (id. at 7). Regardless, Bell Atlantic states that it will provide a trial plan for the use of cellular service for both held orders and customers out-of-service due to an outage (id.). Bell Atlantic states that the implementation of even this trial plan presents complex

⁴ Defined as police, fire, hospitals, nursing homes, ambulance services and government agencies (Compliance Filing at 6).

issues and that the Company will provide the Department with regular updates on the feasibility of implementing all or part of the trial plan (id.).

b. Comments

The Attorney General recommends that the Department reject Bell Atlantic's cellular trial plan because it contains costs that are unjust and unreasonable (Attorney General Comments at 9-10). The Attorney General also argues that the Department has enough evidence in the record to order Bell Atlantic to deploy cellular phones to all customers during MESOs (id. at 10). Finally, the Attorney General recommends that the Department require Bell Atlantic to allow customers to make toll calls on their replacement cellular telephones during outages without the use of credit cards or calling cards (id. at 12-13).

Bell Atlantic states it is unable to undertake its trial plan until new Federal Communication Commission ("FCC") rules governing local exchange carrier provision of cellular services become effective on February 11, 1998 (Bell Atlantic Reply Comments at 9-10). Bell Atlantic also states that the Company would have to redesign its billing system if it were to include charges on customer bills for toll calls made on replacement cellular telephones during outages (id. at 6).

c. Analysis and Findings

In its Compliance Filing, Bell Atlantic states that it will provide substitute cellular telephone service to medical and emergency services providers within six hours of a declared MESO, and to medical needs customers within 24 hours of a declared MESO. The provision of substitute cellular service as described by the Company takes into account the relative

priorities: first, the Company should provide such service to medical and emergency services providers; second, resources should be devoted to medical needs customers. Further, we reject the Attorney General's suggestion that Bell Atlantic be required to allow these customers to make toll calls on the temporary cellular telephones without the use of credit cards or calling cards. The intent of substitute cellular service for medical needs customers is to provide them with access to a telephone in case of a medical emergency, not to provide them with the same complement of phone services they had prior to the outage. Accordingly, the Department finds that, as stated in the Compliance Filing, Bell Atlantic's policy governing the provision of cellular phones to emergency services providers as well as to residential customers with medical needs during MESOs is appropriate and reasonable.

In addition, at this time we decline to adopt the Attorney General's recommendation that Bell Atlantic be required to provide substitute cellular service to all out-of-service customers during a MESO.⁵ In D.P.U. 96-30, at 24, the Department directed Bell Atlantic to submit a feasibility study for providing substitute telephone service to all customers during a MESO, including medical needs customers. We also stated that based on the results of the study, the Department would then determine whether the provision of a broad program of temporary service for all customers was reasonable. In its Compliance Filing, the Company stated that it was unable to file a completed feasibility study at that time because it must wait

⁵ We disagree with the Attorney General's argument that there is sufficient record evidence to direct Bell Atlantic to deploy cellular phones to all customers during an outage. Among other things, (1) the Company has not completed its feasibility study on this issue and (2) the record contains no analysis relative to the cost of this service and its affect on Bell Atlantic's ability to provide other services to the public.

until relevant FCC regulations took effect in February 1998. However, the Company presented a trial plan for the use of cellular service for both held orders and out-of-service customers, and stated that it would provide regular updates on the progress of its plan. In that Bell Atlantic has addressed our directives regarding temporary cellular service for medical needs customers in its Compliance Filing, we will allow Bell Atlantic a reasonable amount of time to complete its feasibility study on temporary cellular service for all out-of-service customers.

Accordingly, we direct the Company to provide an update on its progress with the feasibility study, including a projected completion date, within 30 days of this Order.

3. Emergency Restoration Service Vehicle

In D.P.U. 96-30, at 25, the Department found that there is a need for Bell Atlantic to have a formal policy regarding the use of its emergency restoration service vehicles ("ERSVs"). Further, we directed the Company to describe the Company's policies and procedures for the use of ERSVs. Id.

a. Bell Atlantic

Bell Atlantic states that it has developed "draft" guidelines for the use of its ERSVs (Compliance Filing at 7; Att. B). The Company states that adoption of those guidelines will be conditioned on successful completion of field testing (id.). Further, Bell Atlantic states that the decision to deploy ERSVs is based on the nature of the service outage, the number of customers affected, the projected duration of the service outage and the geography in which ERSVs might be deployed (id.).

b. Comments

The Attorney General requests that the Department require Bell Atlantic to deploy its ERSVs once a service outage is expected to last longer than 24 hours, unless cellular phone deployment would provide faster and more efficient replacement service (Attorney General Comments at 14-15). The Attorney General states that this policy would reduce the likelihood of a person in an emergency situation being unable to use a telephone (id at 15).

c. Analysis and Findings

After review of Bell Atlantic's draft plan on deployment of its ERSVs for use during extended service outages, the Department finds that it is reasonable and complies with the directive in D.P.U. 96-30. Contrary to the Attorney General's recommendation that the Department establish criteria for when Bell Atlantic should deploy its ERSVs, we find that such a decision is best left to the Company, given the many factors that must be taken into account in determining whether an ERSV should be dispatched.

D. Priority Restoration of Service

In D.P.U. 96-30, at 25, the Department found that Bell Atlantic's policy with respect to priority restoration of service is generally adequate. The Department, however, directed Bell Atlantic to include a cost analysis in its Compliance Filing for use in a database that would set priorities for the restoration of service to institutional emergency services providers. Id. at 25-26.

1. Bell Atlantic

Bell Atlantic states that it currently maintains a record of institutional emergency services providers, or Essential Services Lines ("ESL") customers (Compliance Filing at 8). ESL customers include hospitals, nursing homes, police and fire services, ambulance services and government agencies (id.). The Company also states that (1) whenever it changes or establishes service, the Company updates customer records to identify, among other things, each customer's status regarding priority restoration of service, and (2) the Company makes these records readily available to customer service bureau representatives when customers report a service problem (id.). Bell Atlantic further states that it uses these records to identify customers with critical medical needs to allow them top priority for restoration of service (id.). In addition, Bell Atlantic states that it will verify critical medical needs customers for priority status every 30 days to ensure that no customer is taken off priority status too early (id.).

2. Comments

The Elected Officials state that keeping accurate lists of customers with critical medical needs is very important to the proper functioning of the MESO plan (Fitzgerald Comments at 2; Keane Comments at 2). The Attorney General recommends that the Department conduct evidentiary hearings to develop criteria for establishing which types of medical conditions qualify for priority restoration of service (Attorney General Comments at 6). The Attorney General states that persons with permanent medical conditions should not be required to re-qualify for priority of restoration service and persons with temporary medical conditions should be required to re-qualify no more than once a year (Attorney General Comments at 6; see also Giordano Comments at 3). The Attorney General also states that persons who qualify

for priority restoration of service should be included in the Company's records but have their personal data protected from unauthorized access (Attorney General Comments at 6-7).

Bell Atlantic states that its database of individuals with critical medical needs will be kept confidential, with access given on a need-to-know basis (Bell Atlantic Reply Comments at 12). Specifically, Bell Atlantic states that such records are "flagged" with a special code identifying the customer as one who requires priority restoration, and the priority restoration information is immediately available to the customer service bureau call-taker and to field forces responsible for re-establishing service (Compliance Filing at 8). Bell Atlantic also states that critical medical needs customers must establish priority status by sending a physician's letter to Bell Atlantic establishing medical need (Bell Atlantic Reply Comments at 12). Bell Atlantic further states that although it does not require customers with permanent medical needs to provide medical updates, Bell Atlantic advises customers with temporary medical needs to notify the Company when a change in their medical condition warrants removal from the priority list (*id.* at 11-12, n.7).

3. Analysis and Findings

As stated in the Compliance Filing, Bell Atlantic currently has a database that identifies ESL customers, and a coding method to identify critical medical needs customers. These methods help to ensure that critical needs customers will receive priority restoration of service in the event of an outage. Therefore, the Department finds that this portion of Bell Atlantic's Compliance Filing is adequate. In addition, after review of the record, the Department finds that Bell Atlantic's policy regarding checking and updating the priority list for both permanent

and temporary critical medical needs customers is adequate to ensure the integrity of its customer contact list. With regard to confidentiality of critical medical needs customers' records, the Department finds that Bell Atlantic's policy of maintaining the confidentiality of these records, as stated in its Compliance Filing and Reply Comments, is adequate.

In addressing the Attorney General's request for evidentiary hearings to establish standards for the types of medical conditions that qualify for priority restoration of service, determining such standards through a hearing process would be unduly and perhaps unnecessarily difficult because of the complex nature of medical conditions and the need for confidential discussions between a customer and the Company. The Department finds that determining which medical needs merit priority restoration of service status is best done on a case-by-case basis, and in private discussions between a customer and the Company.

E. Bill Credits

In D.P.U. 96-30 at 26, the Department found Bell Atlantic's current practice of automatically providing bill credits to residential customers after 24 hours of service outage adequate. The Department ordered Bell Atlantic to revise its tariff to comply with its current practice because the Company's tariff did not expressly provide for this practice. Id.

1. Bell Atlantic

Bell Atlantic states that it has revised its tariff to reflect its current bill credit practice of automatically providing bill credits upon "notice" of an outage of more than 24 hours (Compliance Filing at 9, Exh. C.). Bell Atlantic also states that with respect to a MESO similar to that occurring in the Mission Hill area where customers were not able to

immediately call repair service, the event itself would qualify under the existing tariff as notice to the Company (IR-DTE-1-3, at 2).

2. Comments

The Customers state that the language in Bell Atlantic's tariff needs to be more explicit so that it is not the sole responsibility of a customer to demand a bill credit (Pultinas Comments at 3, Giordano Comments at 3). The Customers add that the Company should be more proactive in finding which customers lost service and providing those customers with proper credit (Giordano Comments at 3).

3. Analysis and Findings

We have reviewed the Company's revised tariff language concerning bill credits and find it to be reasonable and in compliance with our directive. Based on the Company's definition, notice of a service outage of 24 hours or more is deemed to have been given to the Company when either (1) a customer notifies the Company of such an outage, or (2) the Company otherwise becomes aware of the outage (e.g. the Mission Hill MESO) (see IR-DTE-1-3).

F. Directory Assistance Listings

In D.P.U. 96-30, at 31, the Department noted that callers had trouble obtaining telephone listings from directory assistance ("DA") for certain Mission Hill residents if those residents were served by a Brookline exchange. The Department directed Bell Atlantic to file a report regarding this issue and the Company's progress to date in correcting the problem. Id. at 32.

1. Bell Atlantic

Bell Atlantic states that its DA database now carries "Mission Hill" as a discrete locality in order to alleviate the confusion of Mission Hill customers who reside in Boston but are serviced from the Brookline wire center (Compliance Filing at 10). Bell Atlantic adds that to the extent that callers have had a problem obtaining a listing for a resident described as living in Mission Hill, this change in listing should alleviate such problems (id.).

2. Comments

The Attorney General argues that Bell Atlantic has failed to correct the DA listings problem for Mission Hill customers (Attorney General Comments at 16). The Attorney General states that when a caller requests a telephone number for a Mission Hill resident, but identifies the resident as living in Boston, Bell Atlantic's DA representatives are unable to locate the number (id. at 16; see also Pultinas Comments at 3, Giordano Comments at 3).

3. Analysis and Findings

While Bell Atlantic has added the "Mission Hill" locality as a discrete Boston neighborhood in its DA database, the Department concurs with the Attorney General and the Customers that there continues to be confusion regarding DA for Mission Hill residents. Therefore, we direct Bell Atlantic to revise its DA database within 30 days of this Order so that callers requesting a telephone number for a Mission Hill resident, but identifying that resident as living in Boston, will be given the correct number by the DA operator.

III. ORDER

Accordingly, after due notice, and consideration, it is

ORDERED: That the Compliance Filing filed by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, on October 22, 1998, is hereby approved; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic shall comply with all directives contained herein.

By Order of the Department,

Janet Gail Besser, Chair_____

John D. Patrone, Commissioner

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).